

**UNPUBLISHED**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERESA LYNN BATTERSON, ROGER  
DALE KOLTHOFF, and RICHARD  
ALLEN HIGH,

Defendants.

No. CR01-3030-MWB

**REPORT AND RECOMMENDATION  
ON MOTION TO SUPPRESS**

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***I. INTRODUCTION***

On June 21, 2001, the defendant Teresa Lynn Batterson (“Batterson”) was indicted by a Grand Jury on one count of possession with conspiracy to manufacture methamphetamine in violation of 21 U.S.C. § 841(a)(1), 841(b)(1)(B) and 846; and two counts of opening and maintaining a place for the purpose of manufacturing, distributing and using a controlled substance, in violation of 21 U.S.C. § 856(a)(1). (See Doc. No. 4) On August 15, 2001, Batterson filed a Motion to Suppress Evidence (Doc. No. 32), with a supporting brief (Doc. No. 33) and request for evidentiary hearing (Doc. No. 34). The plaintiff (the “Government”) filed its resistance to the motion on August 27, 2001 (Doc. No. 41) The Trial Scheduling and Management Order entered June 27, 2001 (Doc. No. 18), assigned motions to suppress in this case to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B), for the filing of a report and recommended disposition.

The court held a hearing on the motion on September 13, 2001, **granting** Batterson’s request for hearing (Doc. No. 34). Assistant United States Attorney Shawn Wehde

appeared on behalf of the Government. Batterson appeared in person with her attorney, Martha McMinn. The Government offered the testimony of Webster County Sheriff's Deputy Chris O'Brien. Batterson testified in her own behalf. The court has considered the evidence, reviewed the parties' briefs, and considers this matter fully submitted and ready for decision.

## ***II. FACTUAL BACKGROUND***

Resolution of Batterson's motion depends primarily on the court's factual findings; that is, whether the court believes Batterson's version of the events or the version of the Government's witness. On the evening of April 17, 2001, Webster County Sheriff's Deputy Chris O'Brien was on routine patrol, working the night shift. He was contacted by dispatch to investigate a report that a woman had called the police stating she had found a man in an outbuilding on her property, and she believed he was cooking methamphetamine. The residence in question was in the 2700 mile of Racine Avenue in rural Webster County, south and east of Fort Dodge, Iowa. Officers from other small town sheriff's offices also were dispatched. En route to the residence, Deputy O'Brien received a call from officers who had already arrived at the scene. They asked Deputy O'Brien to stop a vehicle being driven by a Lindy Habben. The officers believed Richard High was a passenger in the vehicle, which had just left the scene of the rural residence.

Deputy O'Brien stopped the Habben vehicle and located Richard High in the back seat. High was taken into custody by another officer who had arrived at the scene of the traffic stop. Deputy O'Brien continued on to the scene of the rural residence. When he arrived at the scene, Deputy O'Brien saw Detective Boekelmann standing next to the driver's window of a car that was in the driveway. Detective Boekelmann was speaking to a female who was sitting in the driver's seat. Deputy O'Brien approached the vehicle and

recognized Teresa Batterson, whom he had met previously, as the driver. Another officer at the scene had confirmed the vehicle was registered to Batterson.

Deputy O'Brien spoke briefly with Detective Boekelmann, and then spoke with Batterson. He asked Batterson if she had been with Richard High earlier in the evening, and Batterson said she had. Batterson said she was upset because Detective Boekelmann had told her she probably was going to be arrested in connection with a methamphetamine lab officers had found on the property. Deputy O'Brien asked Batterson if Detective Boekelmann had advised her of her rights, and Batterson said he had. Then the deputy asked Batterson if she would answer some questions, and she agreed.

At some point during the questioning, Deputy O'Brien asked Batterson if she would give permission for him to search her vehicle for contraband, weapons, and the like. Batterson consented to the search. Deputy O'Brien asked Batterson to step outside of her vehicle and wait near the hood with another officer, Officer Smith, while Deputy O'Brien conducted the search. Batterson was not under arrest at this point, and she was not being restrained in any way. Deputy O'Brien searched the interior of the vehicle thoroughly, and did not locate anything of evidentiary value in the vehicle.

The deputy then asked Batterson if he could search her purse. The purse had been on the passenger's seat next to Batterson when she was in the car. She took the purse with her when she got out of the car. Batterson consented to the deputy's search of her purse. Deputy O'Brien emptied all the contents out of the purse and searched through them.<sup>1</sup> Two other officers observed the search of the purse's contents. Nothing of evidentiary value was found in the purse.

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<sup>1</sup>Deputy O'Brien testified he emptied the purse's contents onto the hood of the car. Batterson testified the officers actually emptied the purse's contents onto the front seat of the car. The court finds the discrepancy to be irrelevant to the issues raised in Batterson's motion.

Deputy O'Brien next asked Batterson if the officers could search the trunk of her vehicle. Batterson agreed. The deputy looked at the keys in the vehicle's ignition, and saw there was no trunk key on the key ring. He looked through the vehicle for a trunk release but could not locate one. He asked Batterson if there was a trunk release button, and she said there was not. Batterson said a key was required to open the trunk. The deputy asked Batterson where the trunk key was, and she replied that she was not sure and thought she might have left the key at home.

Deputy Knippel, who had witnessed the search of the purse's contents, remembered seeing a GM type key in the purse. The vehicle was a Chevrolet Corsica, a GM product. Deputy O'Brien handed the purse to Batterson and asked her to retrieve the key. At this point, some of the purse's contents had not been replaced from the search, and remained either on the vehicle's hood or in the front seat. (See note 1, *supra*.) Batterson looked through the purse, and said she could not find a key. Deputy O'Brien took the purse back from Batterson, and Deputy Knippel located the GM key in the bottom of the purse.

Deputy Knippel took the key and opened the trunk. Deputy O'Brien was still standing by the front of the vehicle. Deputy Knippel indicated he had found something in the trunk, and Deputy O'Brien walked back to the trunk. He saw starter fluid, gas cans, plastic tubing or hoses, glass jars, and other items customarily used in the manufacture of methamphetamine. The officers notified Deputy Boekelmann, who was in charge of the investigation at the scene, and the items in the trunk were seized by Deputy Boekelmann.

Deputy O'Brien testified that throughout his questioning of Batterson and the officers' search of her vehicle and purse, she was nervous, appeared to be somewhat upset by the unfolding events, but remained cooperative. Based on the deputy's training and experience, he did not believe Batterson to be under the influence of any drugs. She responded appropriately to his questions, and did not hesitate or fail to respond to any

question. Sh never withdrew her consent, either verbally or by any action that he observed, to the search of her vehicle, her purse, or the trunk.

Batterson testified she never gave the officers permission to remove the key from her purse and search the trunk. She did not recall the officers asking separately for permission to search the trunk, only for permission to search the inside of the car. She said if she had known the trunk key was in her purse, she would not have consented to removal of the key and the search of the trunk.

### **III. ANALYSIS**

The court finds Deputy O'Brien's version of the events to be highly credible. The court finds the deputy asked for permission to search the vehicle, without restricting his request to the interior of the vehicle. The court further finds Batterson's consent to search the vehicle was never revoked, and it was reasonable for the officers to conclude that her consent to search the vehicle included the trunk. Batterson consented to a search of her purse, and the GM key was in plain view in the purse. Batterson never withdrew her consent to search the purse.

The court finds this to be a clear, overwhelming case of proper police action. The officers were cautious, appropriate, and acted admirably in every way.

Batterson claims that by informing the officers she did not have the key to the trunk, she effectively withheld consent to a search of the trunk. She relies on *United States v. Patacchia*, 602 F.2d 218 (9th Cir. 1979), where the court held the response, "I would but I can't," does not equate with, "You may open the trunk if you can." *See id.*, 602 F.2d at 219. However, in *Patacchia*, there was no prior consent to search the vehicle. The court finds *Patacchia* distinguishable on its facts. As that court noted, "The existence of consent to a search is not lightly to be inferred, and is a question of fact to be determined from the

totality of circumstances.” *Id.* (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973)).

On the totality of these circumstances, the court finds Batterson consented to a search of her vehicle, without restricting her consent to the vehicle’s interior. She also consented to a search of her purse, where the trunk key was in plain view. The officers had the right to retrieve the key and open the trunk.

#### ***IV. CONCLUSION***

For the reasons set forth above, **IT IS RECOMMENDED**, unless any party files objections<sup>2</sup> to the Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), within ten (10) days of the service of a copy of this report and recommendation, that Batterson’s motion to suppress be **denied**.

**IT IS SO ORDERED.**

**DATED** this 20th day of September, 2001.

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PAUL A. ZOSS  
MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT

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<sup>2</sup>Objections must specify the parts of the report and recommendation to which objections are made. Objections also must specify the parts of the record, including exhibits and transcript lines, which form the basis for such objections. *See* Fed. R. Civ. P. 72. Failure to file timely objections may result in waiver of the right to appeal questions of fact. *See Thomas v. Arn*, 474 U.S. 140, 155, 106 S. Ct. 466, 475, 88 L. Ed. 2d 435 (1985); *Thompson v. Nix*, 897 F.2d 356 (8th Cir. 1990).